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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-202141

DATE: June 9, 1981

MATTER OF: Empire Mechanical Contractors Inc.

**DIGEST:**

Where pursuant to special instruction letter issued by agency, commercial carrier delivered bid to central mail facility more than three hours before bid opening and bid arrived at opening location after bid opening, bid may be considered for award as it was in Government hands prior to bid opening and late arrival was due to improper Government action in not following normal procedures in handling bid once it arrived.

Empire Mechanical Contractors Inc. protests the determination by a contracting officer at Tinker Air Force Base, Oklahoma, that a bid submitted by Central Mechanical may be considered for award even though it was not received in the bid opening room until 50 minutes after the time set for opening. The bid was accepted because the agency believed that it was delivered to the wrong place due to a Government directive on package delivery and that the bid was in the Government's possession several hours prior to bid opening. The protester argues that it was the duty of the bidder's carrier to deliver the bid to the proper place and that as a hand-carried bid it could only be mishandled after it was date stamped by the installation. We believe the agency properly accepted the bid.

IFB F34650-81-B-0028 was issued on December 29, 1980, for the installation of a steam distribution system and tanks. Bid opening was scheduled for 2:00 p.m. on February 6, 1981, at Building 3001, Visitor Control Center, Tinker Air Force Base. The solicitation provided that hand-carried bids must be taken to that location.

[Protest Against Late Bid Determination]

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Five bids were received by the time and date specified. When the bids were opened at 2:00 p.m. it was determined that Empire was the apparent low bidder. Central's bid, which was lower, was not received in the Visitor Control Center until 2:50 p.m.

The Central bid was hand-delivered by a commercial carrier to the Base Mail Center instead of the Visitor Control Center as specified by the solicitation. The two offices are located in Building 3001. Agency personnel indicate that the bid package was "signed-in" at the Mail Center at approximately 10:45 a.m. on February 6. The package was then delivered and "stamped in" at the Contracting and Manufacturing mail room at 1:27 p.m. This room is about a five minute walk from the Visitor Control Center and although normal procedure dictates that when a package is received which clearly shows that it contains a bid and reflects the date and time of bid opening (as this package did) it be hand carried to the Visitor Control Center, the package was not time stamped received at the Center until 2:50 p.m.

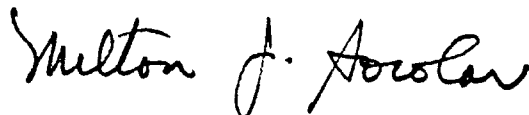
The carrier indicates that it delivered the package to the Base Mail Center instead of the Visitor Control Center pursuant to a letter dated July 22, 1976, from the Chief of the Base's Administrative Communications Branch containing a delivery scheme for commercial carriers which instructed them that packages not addressed to locations listed in the Base letter be delivered to the Mail Center. The letter did not list the Visitor Control Center.

Late bids delivered by commercial carriers are not for consideration under the late bid provision contained in Defense Acquisition Regulation § 7-2002.2 and the "Late Bid" clause in the solicitation, both of which allow consideration of a late bid sent by mail if lateness is due to Government mishandling after it has been received. See Scot, Incorporated, 57 Comp. Gen. 119 (1977), 77-2 CPD 425. A late hand-carried bid, or as in this case, a late bid delivered by a commercial carrier, may, however, be considered where lateness is due to improper action of the Government and where consideration of the late bid would not compromise the competitive procurement system. On the other hand,

such a late bid should not be accepted if the bidder significantly contributed to the late receipt by not acting reasonably in fulfilling its responsibility of delivering the bid to the proper place by the proper time, even though lateness may be in part caused by erroneous Government action or advice. Sound Refining Inc., B-193863, May 3, 1979, 79-1 CPD 308. For a late hand-carried bid to be considered, it must be shown that wrongful Government action was the sole or paramount cause of late receipt.

It is clear that the late receipt of Central's bid was the Government's fault. Mailroom personnel at the Mail Center indicated that the bid package was first delivered more than three hours before bid opening to the location the Government itself specified in a special instruction letter sent to commercial carriers. We do not believe the carrier contributed to the lateness by failing to deliver the bid package to the location specified by the invitation and by the label on the bid package because the instruction letter specifically informed carriers to deliver packages to locations listed in the letter rather than to the address on the package to be delivered. In addition, the agency maintains that even though the bid was delivered to a location other than where it was expected, it was placed in the internal mail system soon enough so that it should have arrived at the bid opening location prior to opening time. This would be so even if we discount the 10:45 a.m. delivery at the Mail Center and only consider the 1:27 p.m. arrival at the Contracting and Manufacturing mail room. Finally, there is no question of compromising the integrity of the procurement system by accepting this bid because the bid had been out of the bidder's hands and in the Government installation's mail system several hours before bid opening and arrived unopened.

It is our view that the agency acted reasonably in considering Central's bid and the protest is denied.



Acting Comptroller General  
of the United States